No. 264

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

JAMES P. DONOVAN, et al., *Petitioners,*

v.

CITY OF DALLAS, et al., *Respondents.*

APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND THE COURT OF CIVIL APPEALS OF THE STATE OF TEXAS, FIFTH SUPREME JUDICIAL DISTRICT

BRIEF FOR RESPONDENTS

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AUTHORITIES

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I

Opinions Below

The opinion of the Supreme Court of Texas in *City of Dallas* v. *Dixon*, R. 276-286, is reported at 365 S.W. 2d 919 (Tex. 1963).

The judgment of the Court of Civil Appeals, for the Fifth Supreme Judicial District of Texas in the Original Con-

tempt Proceedings in *City of Dallas* v. *Brown*, appears at R. 248-254.[1] (May 22, 1963).

The Per Curiam Opinion of the Court of Civil Appeals in *City of Dallas* v. *Brown* (Petition, 27a) is reported at 368 S. W. 2d 240 (June 7, 1963).[2]

II

Constitutional and Statutory Provisions

Art. 5, Section 3, Texas Constitution, provides as follows:

> "§ 3. Jurisdiction of Supreme Court; writs; sessions; clerk
>
> "Sec. 3. The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or

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[1] While not cited for Review in the Petition for Certiorari, Petitioners' Brief on the Merits page 1 cites *City of Dallas* v. *Brown*, R. 10-18, reported at 362 S. W. 2d 372 (1962), as an Opinion Below. This opinion was entered on October 24, 1962, R. 15.

[2] As this Court by its Order of October 21, 1963 did not grant Certiorari to the United States District Court, R. 354, the opinions of the United States District Court, Northern District of Texas in *Brown* v. *City of Dallas*, R. 306, 307, and *Donovan* v. *Supreme Court of Texas*, R. 347-354, are not here under review. Indeed R. 255-354 except for the Order Allowing Certiorari, R. 354, is only material to show the extensive due process which has been accorded to Petitioners.

where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

"The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction."

Art. 1733 Vernon's Annotated Civil Statutes of Texas confers power upon the Supreme Court of Texas to issue a writ of mandamus:

"The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus agreeable to the principles of law regulating such writs, against any distant judge, or court of Civil Appeals or judges thereof, or any officer of the State Government, except the Governor."

Art. 1826, Vernon's Annotated Civil Statutes of Texas, grants power to Courts of Civil Appeals to punish for contempt as follows:

"They may punish any person for a contempt of said courts, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days."

Art. 1269j-5 Vernon's Annotated Civil Statutes of Texas, provides that all cities having a population of more than seventy thousand (70,000) may issue revenue bonds for enlarging or extending or repairing or improving its airport, or for any two (2) or more such uses. The text of this statute is included in Appendix A *infra*, pages 54-56.

III

Questions Presented

Respondents believe that the questions properly before this Court are the following:

1. Where by law any public project is automatically stopped by pending litigation, regardless of merit, may class action litigants seeking to prevent construction of an airport runway after losing on the merits in the Texas courts (with certiorari denied in this Court) relitigate the merits of their claim in Federal District Court in open defiance of a valid Texas state court order which prohibits such relitigation?

2. May Texas courts protect their judgment by prohibiting relitigation of the claim on which it is based in Federal court when such order is clearly necessary because a *res judicata* plea is an inadequate remedy as the mere filing of the relitigation claim automatically destroys the effectiveness of the Texas Court's judgment?

3. Is refusal to discontinue prosecution of the Federal Court action, and the filing of a new complaint in Federal Court seeking an injunction against the individual judges of the Texas Court who had issued the order prohibiting the relitigation, contemptuous conduct?

4. Are parties who have defied a valid court order deprived of due process of law when found guilty of con-

tempt after reasonable, full notice, hearing, and opportunity to purge themselves of the contempt?

IV

Statement of the Case

1. *Summary of the Facts*

This case involves contempt penalties assessed against Petitioners for admitted violations of an order of the Texas Court of Civil Appeals to cease attempts to relitigate the merits of a dispute decided by Texas courts in 1961, with this Court denying Certiorari in 1962.

Some of the Petitioners brought a class action on behalf of landowners adjacent to Love Field, the Dallas airport, to restrain construction of a new airport runway parallel to an existing runway, and to prevent the issuance of bonds to pay for said runway and any damages caused thereby (*Atkinson* v. *City of Dallas*). That Complaint was dismissed on the ground, among others, that under Texas law there can be no injury to or taking of the air rights or property of Petitioners without compensation. Article I, Section 17 of the Texas Constitution so provides. Dallas must therefore pay any damages caused to Petitioners and other adjacent landowners by said new parallel runway.

After losing their *Atkinson* case to enjoin the runway's construction in three Texas courts, and this Court, said Petitioners filed *Complaint number two* (*Brown* v. *City of Dallas*) seeking essentially the same relief in the United States District Court for the Northern District of Texas two hours before the City was to receive sealed bids for the sale of the bonds. This Complaint was intended to and did prevent the sale of the bonds as bonds cannot be issued

while any litigation is pending—no matter how frivolous the litigation may be. *City of Dallas* v. *Dixon*, R. 280, 283.

When Petitioners filed *Brown* in Federal Court, the City of Dallas then sought an order from the Court of Civil Appeals prohibiting Petitioners from prosecuting this action and from filing any further litigation to prevent the construction of the runway or the sale of the bonds to finance it. The order was granted after the Texas Supreme Court had stated in a decision upon a mandamus petition that it should be granted. Petitioners further violated that order by filing *Donovan* v. *Texas Supreme Court* against the individual members of the Supreme Court of Texas and the individual members of the Court of Civil Appeals in the Federal Court asking that enforcement of the prohibitory order be enjoined. These are the very Judges who had ordered that no such new litigation be filed. Petitioners also violated the order by vigorously continuing the prosecution of their *Brown* case in the Federal Court, adding new parties of the same class and dropping other parties. After notice and a hearing before the Texas Court of Civil Appeals a judgment of contempt for these violations was entered, after each Petitioner had an opportunity to purge himself and avoid punishment. For example Petitioner Donovan could have escaped serving his 20-day sentence by dismissing his complaint against the Texas Judges as it is the only Complaint in which he is a plaintiff, while other Petitioners were given 6 days to withdraw from the two Federal Court cases and escape their $200 fines. Twenty six Plaintiffs chose to purge themselves.

It is to review the judgments of contempt against those who did not purge themselves that this Petition was brought.

The important facts herein are many and complicated so

the foregoing summary is presented, but it is believed that the full statement now presented is essential to Respondents' answer herein.

2. *Petitioners' First Case to Prevent Airport Runway Parallel to Existing Runway*

The contempt penalties herein involved were imposed upon Petitioners for violating an Order of the Court of Civil Appeals, Fifth Supreme Judicial District of Texas. R. 78-82. The Order of the Court of Civil Appeals was issued pursuant to a mandate of the Supreme Court of Texas in *City of Dallas* v. *Dixon* (R. 248-254) ordering it to enforce its judgment in the case of *Atkinson* v. *City of Dallas*, 353 S.W. 2d 275, cert. den., 370 U.S. 939, rehearing denied 371 U.S. 854.

This case, as did *Atkinson*, arises from a determination of the City of Dallas to construct, without use of Federal funds, a runway parallel to an existing runway at its municipal airport, Love Field, and to issue revenue bonds to pay for the improvements. Petitioners are property owners and residents more than 2,000 feet removed from the airport who object to the construction of the new runway.

The *Atkinson* case was filed on April 3, 1961, as a class suit in the District Court of the State of Texas. R. 20, 22. Atkinson attacked both the construction of the runway and the validity of certain revenue bonds which the City was about to issue to finance construction of the runway. R. 20-34.

On April 7, 1961, a temporary injunction was denied by the District Court after hearing three days of oral testimony. R. 3.

On July 17, 1961, the District Court denied the request in *Atkinson* for a permanent injunction and rendered a Summary Judgment in favor of the City. R. 11. On De-

cember 15, 1961, the Court of Civil Appeals affirmed the Summary Judgment, R. 11, and on January 19, 1962, a motion for rehearing was overruled. R. 11.

The Supreme Court of Texas on March 14, 1962, denied a Writ of Error with the notation "no reversible error" and announced that a motion for rehearing would not be entertained. R. 11.

This Court on June 25, 1962, denied a Writ of Certiorari, 370 U.S. 939. On October 8, 1962 a Motion for Rehearing was also denied, 371 U.S. 854.

3. *Petitioners' Second Case Seeking to Relitigate Same Issues and Respondents' Actions to Prevent Relitigation*

On September 24, 1962, the day on which bids for the selling of the Love Field Revenue Bonds were to be opened, Petitioners filed Civil Action No. 9276, *Brown* v. *City of Dallas*, in the United States District Court seeking substantially the same relief sought in *Atkinson*, i.e. a permanent injunction to restrain, among other things, the building of the runway at Love Field and the issuance of revenue bonds to pay therefore. R. 255-263. *Brown* was filed by 122 plaintiffs, 30 of whom were Plaintiffs in the *Atkinson* case filed April 3, 1961. R. 285.

On October 2, 1962, the City of Dallas filed an application for a Writ of Prohibition in the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas seeking to enjoin Petitioners from preventing the sale of the bonds through the device of relitigating *Atkinson*. They asked that the Court use this Writ to enforce its judgment in the *Atkinson* case, by prohibiting the Petitioners from attempting to relitigate the same issues, from interfering with the issuance and sale of the Love Field Revenue Bonds and also that the Plaintiffs be required to dismiss said cause

and refrain from filing any other litigation to prevent construction of the runway or the sale of the bonds.

Four days later, on October 6, 1962, Petitioners filed a motion in the United States District Court in the *Brown* case for an injunction against the Texas Court of Civil Appeals to enjoin it from considering or acting upon the Application for a Writ of Prohibition and other Ancillary Mandatory Matters pending therein. On October 10th the United States District Court denied said motion. R. 12.

On October 12, 1962, the City of Dallas filed a Motion to Dismiss the Complaint and an Original Answer in the United States District Court in the *Brown* case. R. 267.

The Writ of Prohibition was denied by the Court of Civil Appeals on October 24, 1962, R. 10-15, with a dissenting opinion filed by Justice Young. On November 23, 1962, a Motion for rehearing was overruled. R. 19.

On December 8, 1962, the City of Dallas filed a Petition for a Writ of Mandamus in the Supreme Court of Texas asking that Court to order and direct the Court of Civil Appeals to enforce its judgment in the *Atkinson* case. R. 1. Petitioner Donovan and his clients were parties to this action; they filed an answer and appeared at the proceedings. R. 54.

The Supreme Court of Texas on March 13, 1963, after a hearing and consideration of briefs, ordered the Court of Civil Appeals to enforce its judgment in *Atkinson* by issuing whatever writs it found to be necessary. The Supreme Court of Texas also said that if the Court of Appeals failed to do so, it would issue a peremptory writ of mandamus commanding, compelling and requiring the Court of Appeals to do so. *City of Dallas* v. *Dixon*, R. 58. A motion for rehearing was denied on April 10, 1963. R. 78. No action was taken by Petitioners either to request a stay order or to cause the decision of the Texas Supreme Court

in the mandamus case to be reviewed by this Court until now after the contempt proceeding has been completed, and the judgments rendered therein are satisfied. The Petition for Certiorari herein was filed on the 89th day after the Judgment of the Texas Supreme Court became final.

The Supreme Court of Texas in its opinion stated that the parties in the case of *Brown* v. *City of Dallas*, in the Federal Court, were bound by the decision in the *Atkinson* case, as the *Atkinson* case was a class action and the judgment binds all members of the class insofar as validity of the bonds and the right of the City to construct runways are concerned if the class were adequately represented by those who sued on behalf of the class. R. 285-286. The Court held that the plaintiffs in the *Brown* case clearly were members of the class represented by the plaintiffs in the *Atkinson* case, the issues sought to be litigated in *Brown* are essentially the same as the issues litigated or which could have been litigated in *Atkinson*, the same ultimate relief is sought, and that no suggestion was made that the Petitioners were not adequately represented in *Atkinson*. Accordingly, the Supreme Court of Texas concluded that it was

> "—the duty of the Court of Civil Appeals For The Fifth Supreme Judicial District to enforce its judgment in *Atkinson* v. *City of Dallas* by issuing whatever writs are necessary and effective to restrain the plaintiffs and their attorney in *Brown* v. *City of Dallas* from further prosecution of that suit." R. 286.

In so doing the Texas Supreme Court recognized that the mere filing of the second (*Brown*) action destroyed the efficacy of the judgment in *Atkinson*. R. 283. It also rec-

ognized that a plea of *res judicata* is not an adequate remedy under such circumstances. R. 280.

The Court stated that the Court of Civil Appeals could not order or direct the dismissal of *Brown v. City of Dallas* in the Federal Court, as a suit cannot be dismissed from the docket of a court without an order of the court and any writ directing dismissal would invade the jurisdiction of the United States District Court to control its own docket. The Court added, however, that there was every indication that the matter had reached the point of "vexatious" and "harassing" litigation and that the Court of Civil Appeals should grant all necessary and proper writs for the enforcement of its *Atkinson* judgment and also it might enjoin other suits to relitigate the same issues which may be filed by other members of the class bound by the *Atkinson* judgment. R. 286.

The Supreme Court of Texas on April 10, 1963, directed the Clerk to transmit a copy of its Judgment and Opinion to the Court of Civil Appeals and also to serve copies on Attorney Donovan. The Supreme Court also requested that the Court of Civil Appeals advise "—whether your Court will, or has, complied with the provisions of the judgment and Opinion of this Court." R. 287-288.

On April 16, 1963, the Court of Civil Appeals after consideration of the opinion of the Texas Supreme Court set aside its judgment rendered on October 24, 1962, R. 80, and issued the Writ of Prohibition and Ancillary Orders. R. 78-82.

Petitioners herein, individually and as a class, and others in the same class, were prohibited and enjoined from in any manner interfering with the enforcement and execution of the judgment in the case of *Atkinson, et al. v. City of Dallas*. R. 80-81. The order prohibited further prosecu-

tion of pending litigation and the filing of new litigation for that purpose.

Petitioner Donovan, attorney for most of Petitioners herein, was present in person in the Court when the Writ of Prohibition and Ancillary Orders was issued. He was personally served with the Order by the Chief Justice. R. 81, 149, 200-201. He admitted this at the contempt hearing. R. 149.

Thereupon, on April 24, 1963, the City of Dallas filed a Supplemental Motion to Dismiss the *Brown* case in the Federal Court. R. 274.

4. *Petitioners' Actions After Order of Prohibition Which Constitute Violations Thereof*

Attorney Donovan, through acts which are admittedly direct violations of the Writ of Prohibition issued by the Court of Civil Appeals, proceeded in two directions. On behalf of himself and other Petitioners he filed lawsuit Number 3, i.e., *Donovan* v. *The Supreme Court of Texas, et al.* in the United States District Court on April 23, 1963, praying that the Federal Court grant an injunction against the individual members of the Court of Civil Appeals and the individual members of the Supreme Court of Texas restraining them from enforcement of the order of prohibition, R. 316-324, issued to carry out the judgment in *Atkinson*. He also filed an answer to the City's motion to dismiss lawsuit number two, the *Brown* case, and vigorously opposed Respondents' motion to dismiss that action. R. 292-306.

At a preliminary hearing in the *Brown* case on May 9, 1963, in the United States District Court, Mr. Donovan appeared, R. 294, as attorney for Petitioners and filed a motion to dismiss certain persons as plaintiffs and also to add new party plaintiffs, R. 293. The Federal Judge

granted the Motion to Dismiss certain of the plaintiffs and, before permitting the new party plaintiffs, required assurance that they had been notified that to prosecute the suit they might be in contempt of the order of the Civil Court of Appeals. Attorney Donovan advised that the new party plaintiffs had been so warned. R. 293, 294.

Thereafter on the same date the United States District Court dismissed the Brown case as being "without merit" (R. 307), indicating that the parties, issues, and relief sought were those decided in the *Atkinson* case and no justiciable issue was therefore presented. R. 306. The Federal District Court stated that Petitioners were attempting to make it an appellate court for the Texas Supreme Court. The Court stated further that Petitioners should have appealed to the United States Supreme Court and not to the Federal District Court. R. 306. On June 14, 1963, the District Court dismissed an appeal from this order upon request of Attorney Donovan and his clients. R. 314, 315.

On May 16, 1963, the United States District Court, after hearing Petitioner Donovan's application to enjoin the Supreme Court and the Court of Civil Appeals from enforcing the Atkinson judgment, R. 336-352, overruled a motion by Donovan to bar the Attorney General from appearing, R. 335, and dismissed the suit. R. 353.[3]

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[3] Petitioners state on page 25 of their Brief, as Point Two, that the United States District Court should have decided the case. However, it should be noted that this Court by its Order of October 21, 1963, did not grant Certiorari to the United States District Court. R. 354. The opinions of the United States District Court, Northern District of Texas in *Brown* v. *City of Dallas*, R. 306, 307, and *Donovan* v. *Supreme Court of Texas*, R. 347-354, are therefore not here under review. However, as stated above, and in the Record 306-307, 349-353, the Federal Court did decide the cases to be without merit.

5. *The Contempt Proceedings*

On May 7, 1963, the City of Dallas filed a Motion praying that the Court of Civil Appeals issue notice to Petitioner Donovan and his clients to show cause why they should not be held in contempt for violation of the Writ of Prohibition and Ancillary Orders. R. 82-90. On May 10, 1963, James P. Donovan filed a Motion For Continuance, R. 93-95, in which he stated, under oath, that he had been served with an Order to Show Cause, directing him to appear before that Court at 9:00 a.m. on Monday, May 13, 1963 to show cause why he should not be punished for contempt of this Court, R. 93-94, and that he had been advised that numerous respondents whom he represented had likewise been served with similar orders, R. 94; and that as it was doubtful that he could prepare defenses by May 13th, he requested additional time to May 20, 1963. By a Supplement To His Motion For Continuance, Petitioner Donovan then listed, by request of the Court, names of all petitioners for whom a continuance of the contempt proceedings was requested. R. 95-97. The Court on May 13, 1963, after hearing, granted Petitioner Donovan's Motion For Continuance to May 20, 1963. R. 97. At this hearing, it may be pointed out, certain parties noted their withdrawal from the lawsuit. R. 98-108.

On May 20, 1963, a Motion to Quash and an Answer to Charges was filed by Petitioner Donovan for 85 Petitioners. R. 109-117. The Motion was heard on May 20, 1963, R. 117-235, at which time Petitioner Donovan appeared for the respondents. R. 117. The Court reviewed the history of the litigation and emphasized what was involved in the Contempt proceedings. R. 122, 123. The Court then called the name of each Respondent individually to determine if he was present or represented by Counsel and whether he knew the nature of the proceeding, R. 124-136. Attorney

Donovan presented a reply argument on Behalf of the Respondents he represented. R. 139-159. The Motion to Quash was denied, R. 162. A list of names to whom a copy of the Writ of Prohibition and Ancillary Orders had been sent was admitted into evidence (R. 171, 241-247) testimony was taken, and adequate time and opportunity was given to anyone who wished to be heard. R. 187-235.

Attorney Donovan stated in open Court that he advised "all of his clients not to testify and I am sure they will avail themselves of the privilege not to testify, as provided for in the Constitution of the United States and Texas." R. 221.

The Chief Justice then noted, however:

> "Mr. Donovan has, in open court, advised his clients not to testify. I am sure Mr. Donovan is authorized to give that advice. However, I think that if any of you care to override his advice, you have a right to appear if you want to.
>
> "I am not advising you to, or suggesting you do so. You have an attorney, and I want to respect your right to refuse to testify. But I also want to respect your right to testify if you insist, over Mr. Donovan's objection, though he is your attorney.
>
> "Do any of you wish to testify?"
>
> "(No response).
>
> "The Chief Justice: I take it then, and the record will show that everyone here was given an opportunity to testify. And they were also notified that they didn't have to testify; not required to.
>
> "Mr. Kucera: Your Honor, may the record also show that the City of Dallas was ready and present in Court, and every one of these parties that was cited for contempt to testify, upon advice of counsel they have re-

fused to do so. And also was given an opportunity individually to select whether they wanted to follow the advice of counsel, and they declined to take the stand.

"The Chief Justice: I think the record so shows. Is that true, Mr. Donovan?

"Mr. Donovan: Yes, Your Honor, except the one thing that I said, that as of this moment that is my advice. I reserve the right as the proceeding goes forward to change that advice if it becomes proper.

"The Chief Justice: Very well."

6. *The Contempt Judgments*

On May 22, 1963, the Court of Civil Appeals issued its Judgment of Contempt (R. 248-254) saying, "We have come to this conclusion that there has been a defiance of law, and that it is our duty to take notice of it and to take appropriate steps in view of it," R. 235. It then proceeded to fine certain defendants $200 each and sentence Petitioner Donovan to 20 days in the County Jail of Dallas County (R. 237-238) pursuant to its Judgment of Contempt. R. 248-254.

The Court in its Opinion, *City of Dallas* v. *Brown*, 368 S.W. 2d 240 (Petition 27a) comprehensively reviewed the facts on which its contempt judgment was based and stated:

> "The testimony presented upon this hearing abundantly demonstrates that all of the respondents are guilty of contempt of this Court. Respondents have been shown to have knowingly violated the orders of this Court which were issued in pursuance to a mandate of the Supreme Court of Texas. Such willful disobedience to a valid order of a Court constitutes contempt which cannot be tolerated. Respondents' contention that they had not been afforded their day in court is entirely without merit. As demonstrated by

the foregoing facts, respondents have had their full day in court. The issues have been presented to twenty-three judges comprising every court from the trial court to the United States Supreme Court and these judges have, without a single dissent, decided the issues against respondents. Over a period of two years respondents have had the benefit of every judicial hearing available in both State and Federal Courts. The issues having been adjudicated against them they must necessarily recognize the end of litigation. There must be an end to litigation else there would be no purpose of beginning litigation." (Petition 35a-36a).

Subsequently, Petitioner Donovan was committed to the Dallas County Jail, and the Petitioners who had been properly served and who had not purged themselves of contempt were fined $200 each.

The Court also noted in its Opinion:

"During the hearing of this matter the respondent, Attorney James P. Donovan, made many irresponsible statements concerning our courts which clearly demonstrates his attitude. For example, he assailed the judgment of the Supreme Court of Texas contending that 'it isn't worth, in our opinion, the paper it was written on.' At another point he said, in effect, that he and his clients were not in contempt of this Court; that they were probably in contempt of the Supreme Court of Texas but they were not being tried for that. (Footnote 1). He admitted that, in response to an inquiry from the United States District Judge, that he had advised his clients that they were subjecting themselves to a contempt action by proceeding in the Federal Court case. The whole record illustrates one fact clearly, that is, that the respondents, with full knowl-

edge of the facts, followed Attorney Donovan's advice and counsel to the effect that orders of the court were invalid and should be disobeyed or ignored." Petition 36a, 37a.

In a footnote the Court observed:

> "It is of interest to note other irresponsible and unlawyerlike statements made by Respondent Donovan, which illustrate his general attitude towards courts. For example, he charged the Assistant City Attorney with 'tampering with the Court' (referring to the Federal Court), and that he did not 'believe in backdoor jurisprudence' (still referring to the United States district Court)." Petition 37a.

7. Petitioners Were Given Opportunity to Purge Themselves of Contempt

Petitioner Donovan and the other Petitioners were given opportunity to absolve or purge themselves of the contempt judgments. R. 254. The Contempt Judgment provided that each of the Respondents pay the fine of $200 within six days or so failing be imprisoned until such time as they shall have purged themselves of contempt by payment of the fine "or until the further orders of this Court." R. 254.

As stated in the Opinion of the Court:

> "Subsequent to the entry of our original judgment several of the respondents appeared and presented additional mitigating or extenuating circumstances and as a result thereof we have amended our order, as shown by the record herein, completely exonerating twenty-six of the respondents and altering and modifying the sentence of others." Petition 37a.

Attorney Donovan was given his 20 day sentence for filing the contemptuous complaint to enjoin the individual members of the Court of Civil Appeals and the individual members of the Texas Supreme Court from carrying out their orders enforcing the *Atkinson* decision and for failure to dismiss pending litigation in the Federal Court. R. 251. He made no attempt to purge himself by dismissing that contemptuous action.

8. *The Habeas Corpus Proceedings*

Following the judgment of the Court of Civil Appeals holding the Petitioners in contempt and assessing penalties and ordering the imprisonment of Petitioner Donovan he, on two occasions, applied to be released through a writ of habeas corpus to the Supreme Court of Texas. On both occasions that Court declined to do so. On the day following such denial, Attorney Donovan applied to a Judge of the United States District Court for similar relief, which was likewise denied. Thereafter Petitioner Donovan applied for a writ of habeas corpus to the United States Circuit Court of Appeals for the Fifth Circuit for similar relief and that Court on May 30, 1963, entered the following order:

> "Pursuant to the provisions of Title 28 U.S.C.A., Section 2241 (b), each of the Judges composing this Court declines to entertain an application for writ of habeas corpus, and the said writ is hereby, DENIED."

V

Summary of Argument

I

At page 43 of their Brief, Petitioners state that what they ultimately seek herein is a Federal Court retrial on the "merits" of their claim to prevent construction of an airport runway and issuance of bonds to pay therefor. This Petition does not raise a substantial federal question on the "merits" of the relief sought by Petitioners, because the Texas courts decided these "merits" in 1961-62 in the *Atkinson* case and this Court denied certiorari to review that judgment. The filing of the *Brown* case in Federal Court and the adding of new parties and new grounds seeking the relief previously adjudicated by the state court judgment in *Atkinson* does not enable Petitioners to escape the bar of *res judicata*, as all of these grounds for the same relief could have, and should have, been raised in the state court for adjudication. The fact that the state court adjudication was a class action adds strength to the *res judicata* bar.

The same relief sought in state court is sought in Federal Court, i.e., prevention of the construction of the parallel airport runway. The Petitioners' claim to an absolute right to a Federal Court decision on the merits of their complaint to relitigate the merits of the state court judgment is unfounded. There is no such right where as here there is no exclusive jurisdiction in the Federal Court to decide these merits. A state court having jurisdiction over the parties can decide Federal constitutional and statutory questions raised by Petitioners and its decision is just as much *res judicata* in other courts as is any decision the Federal Court might render. Moreover as pointed out

above, a Federal Court had decided that Petitioners' claims were without merit, *supra* page 13, footnote 3.

II

The relief sought by Petitioners herein of relitigation of "merits" adjudicated previously being thus barred by *res judicata*, this case resolves into whether Texas state courts may protect their judgment on the merits herein by the issuance of an order prohibiting such relitigation by Petitioners of those merits in a Federal Court, whether contempt judgments are proper for violation of such a prohibitory order, and whether the penalties involved are reasonably within the court's discretion. That acts of contempt were committed by Petitioners is apparently admitted. Petitioners not only continued prosecution of their prohibited relitigation case in Federal Court but in an act obviously designed to show their utmost contempt for the Texas courts and their judges they filed a separate new complaint in Federal Court against the very judges of the Texas Courts responsible for the relitigation prohibition.

That Texas Courts may enter such a protective order when it is "necessary" to enforce their judgments is well established by the decisions of this Court. *Princess Lida* v. *Thompson*, 305 U.S. 456, 466; *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 231. And a case of greater "necessity" is hard to imagine because in this case a plea of *res judicata* is not an adequate remedy because the mere filing of the unmeritorious relitigation complaint has the instant effect of destroying the efficacy of the Texas court's judgment allowing construction of the runway and sale of the bonds. (R. 280, 283).

III

The decision of the Texas Supreme Court interpreting the Texas Constitution and statutes as conferring juris-

diction upon it to mandamus the Texas Court of Civil Appeals to issue the Writ of Prohibition involved herein is not reviewable by this Court. *Kersh Lake Drainage District* v. *Johnson*, 309 U.S. 485, 489; *Fisher* v. *Pace*, 336 U.S. 155, 162.

IV

The contempt proceedings were conducted in full compliance with every requirement of due process of law as to notice, fair hearing and full consideration of the rights of all Petitioners. Petitioners were notified of the acts prohibited not only by service of the court's order in person upon their counsel, but they received notice also by mail, had meetings with their counsel to discuss the order and had the order called to their attention by the Federal Court. Petitioners thus had an extraordinary amount of notice of the order and its import prior to their violations of it. And pursuant to still another notice each Petitioner appeared at the contempt proceedings before the Court and answered to his or her name when it was called prior to the hearing on whether they had committed acts of contempt of that order. All were given an opportunity to testify and to present their defenses through counsel but each Petitioner acting pursuant to the advice of his counsel declined to testify. (R. 221-222). The Court fully explained the nature of the proceedings to each Petitioner. The Court allowed all of the Petitioners an opportunity to absolve or purge themselves of the charges and twenty-six of the Parties did so absolve or purge themselves thereby avoiding contempt penalities. That the intentional and admitted defiance of the valid court orders herein is contemptous conduct is beyond question.

After affording Petitioners in person or through their counsel a full opportunity to present all evidence or defenses which they desired to present a conclusion and judg-

ment of contempt was properly made by the Court. The penalties imposed were most reasonable under the circumstances and certainly no more than necessary to protect the Court's jurisdiction to enforce its judgment and prevent Petitioners from in effect taking the law into their own hands in open defiance of the Court's order. Especially is this true as to the penalties where the Court went to such length to allow Petitioners to absolve or purge themselves of the contempt adjudication. The Court carefully and reasonably exercised its discretion by imposing only those punishments these open and flagrant contempts required.

V

Aside from all other considerations, it is universally established that the order of the Texas Civil Court of Appeals must be obeyed by Petitioners unless and until it is stayed or reversed. Where as here the Court had jurisdiction, this is true under the decisions of this Court even when such an order is erroneously entered. *Howat* v. *Kansas*, 258 U.S. 181, 189-191; *United States* v. *United Mine Workers*, 330 U.S. 258, 293. The interests of orderly government and administration of justice demand that such a rule prevail because respect for and compliance with orders issued by the courts is essential to survival of the rule of law. In no other way can the integrity, dignity and effective functioning of our independent judiciary, and the rule of law in our nation, be maintained.

VI

ARGUMENT

1. No Substantial Federal Question is Presented on the Merits

a. *Res Judicata Bars Relitigation in Federal Court of the Merits Previously Decided by Texas Courts*

Petitioners are attempting to relitigate in a Federal Court the "merits" of a claim which has been decided adversely to them in prior state court actions and which this Court refused to review in 1962. *Atkinson* v. *City of Dallas*, 353 S.W. 2d 275 (Tex. Civ. App. 1962), cert. den., 370 U.S. 939, rehearing den., 371 U.S. 854. This is made crystal clear in Petitioners' Brief, page 43, wherein they ask that this Court order the Federal District Court "to proceed to trial of the case [i.e., *Brown* v. *City of Dallas*, see page 2 supra] on its merits." This prayer for relief reveals precisely that Petitioners seek, in ultimate thrust, to relitigate the merits of their claim on issues either actually decided by the courts in *Atkinson* or issues which could have been decided in *Atkinson*. The fact that parts of Petitioners' complaint raises questions under the Federal Constitution and statutes is of no moment as state courts have just as much power to decide Federal questions properly raised before them as do Federal courts. None of the questions raised by Petitioners in the *Brown* case are questions confined to the exclusive consideration or jurisdiction of a Federal court. And Petitioners have no constitutional or statutory right, as they seem to contend (Pet. Brief p. 24-26), to a Federal court decision upon them. When a court with jurisdiction decides the merits of a controversy

the *res judicata* rule applies whether the decision is made by a Federal or a state court.

This Court has held on numerous occasions that a judgment is *res judicata*, as between parties and their privies, not only as to matters in issue but also as to matters which might have been put to issue. *Fishgold* v. *Sullivan Dry Dock & Repair Corp.*, 328 U.S. 275, 282-283; *Heiser* v. *Woodruff*, 327 U.S. 726, 735; *Cromwell* v. *Sac County*, 94 U.S. 351, 352; *Grubb* v. *Public Utilities Commission*, 281 U.S. 470, 475; *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371, 378. In *Fishgold*, Mr. Justice Douglas stated for this Court on page 282:

> "This elementary principle has long been recognized. Black, *The Law of Judgments*, 2d ed. pp. 761, 821, 936. As stated in *Cromwell* v. *Sac County*, 94 U.S. 351, 352 . . . a prior judgment is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

The issues raised by Petitioners in their Federal Court suit (*Brown*) are issues actually raised and decided against them in their First suit (*Atkinson*) or are issues which should or could have been raised in *Atkinson* and are thus *res judicata*.

The Supreme Court of Texas carefully analyzed the *Atkinson* and *Brown* complaints to determine whether the plaintiffs in *Brown* were bound by the judgment in the *Atkinson* case and were seeking to relitigate issues fore-

closed by that judgment. That Court determined after a comprehensive analysis and examination of the pleadings in the two cases that they are one and the same suit seeking the same relief, i.e., prevention of the construction of the airport runway. R. 283-286.

In addition, the United States District Court in dismissing *Brown* indicated that the parties, merits and relief sought in *Brown* are similar to the *Atkinson* case and no justiciable issue was presented to it in *Brown*. R. 306, 307.

Petitioners' statement that they sought in the *Atkinson* case to enjoin the issuance of "proposed" bonds and that the pleadings clearly demonstrate that "outstanding" bonds were not under attack nor could they have been because of the lack of holders of outstanding bonds as parties defendant is merely sophistry.[4] All of the facts with reference to the outstanding bonds were a matter of record at the time of the institution of the *Atkinson* case and Petitioners could have litigated the matter in that case.

It is clear that under the facts herein and the law as set forth in this Court's decisions, Petitioners are in error in contending that *Brown* is not barred by *res judicata* due to the *Atkinson* decision. All their changes in *Brown* to cite new grounds and new parties are of no avail to escape that plea as all their new grounds and their new parties were available when *Atkinson* was filed and decided. Petitioners cannot deny that the same result is sought in *Brown* as in *Atkinson*, i.e. prevention of the runway by stopping the sale of bonds to finance it.

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[4] Contrary to the contention of Petitioners, Article 1269-j of Vernon's Annotated Texas Civil Statutes authorizes the sale of revenue bonds payable strictly out of Airport Revenues. Neither said law nor any other law requires the vote of the people prior to their issuance, so there is no civil right to be enforced. R. 268. The *Atkinson* case settled the validity of the issuance of the revenue bonds. R. 284.

b. *Res Judicata Applies to the Class Action Judgment*

Petitioners vainly attempt to escape the conclusion that *Atkinson* is *res judicata* as to the issues presented in *Brown* by contending that new parties and new causes of actions are presented for setting aside the bonds and preventing the construction of the runway. (See, e.g., Pet. pp. 6-11 where this attempt on the part of Petitioners takes the form of their recitation of various and sundry "federal causes of action"). However, Petitioners' contentions in this respect ignore the fact that all such "federal causes of action" were in existence when *Atkinson* was filed and they also misconceive the purpose and effect of *Atkinson* as a class action.

The fundamental principles of *res judicata* are applicable in appropriate class actions, such as the *Atkinson* case. *Smith* v. *Swormstedt*, 57 U.S. (16 How.) 288, 302; *Hartford Life Insurance Co.* v. *Ibs*, 237 U.S. 662, 672; *Supreme Council, Royal Arcanum* v. *Green*, 237 U.S. 531, 546. In *Smith*, this Court stated on pages 301-302.

> "For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

In *Hartford Life Insurance Co.* v. *Ibs*, supra, at page 673, quoting from *Southern Pacific R. Co.* v. *United States*, 168 U.S. 1, 48, this Court stated:

> "—even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified."

Similarly, it was held in *Forsyth* v. *Hammond*, 166 U.S. 507, 518 that "though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions."

Moreover, this Court has held that the applicability of the *res judicata* principle is a matter of state law. *Kersh Lake Drainage District* v. *Johnson*, 309 U.S. 485, 489. And under applicable Texas law the issues involved in *Atkinson* and the issues raised, or which could have been raised therein, are deemed *res judicata*. *Cochran County* v. *Boyd*, 265 S.W. 2d 364 (Tex. Civ. App. 1930); *Snelson* v. *Drane*, 134 S.W. 2d 445 (Tex. Civ. App. 1939). In *Cochran County*, the Court made a statement at pp. 365-366 which is most appropriately quoted here:

> "The general rule is that, in the absence of fraud or collusion, a judgment for or against a county or other municipality is binding and conclusive upon all residents, citizens, and taxpayers, in respect to the matters adjudicated which are of general and public interest, and that all other citizens and taxpayers similarly situated are virtually represented in the litigation and bound by the judgment, and this applies especially to

judgments relating to the validity of county bonds. 34 C.J. 1028 §1459.

"The reason for this rule is stated by the same authority on page 1029 as follows: 'If this were not so, each citizen, and perhaps each citizen of each generation of citizens, would be at liberty to commence an action and to litigate the question for himself. • • • If a judgment against the county in its corporate capacity does not bind the taxpayers composing the county, then it would be difficult to imagine what efficacy could be given to such judgment.' See also, 15 R.C.L. 1035 §510.

"The Supreme Court has adhered to this rule in the case of *Hovey* v. *Shepherd*, 105 Tex. 237, 147 S.W. 224, 225 in which it is said: 'The interveners were not parties to the suit of the *K.C., M. & O. R. Co.* v. *City of Sweetwater*, [62 Tex Civ. App. 242, 131 S.W. 251; Id., 104 Tex. 329, 137 S.W. 1117] at the time the judgment of this court was entered but they were citizens of that municipal corporation, and the important question in the case is reached by the announcement of the well-settled proposition of law that, if the matter adjudicated affected the interest of the public as distinguished from the private interest of the citizens of the city, although not parties to the suit, all citizens are concluded thereby.' "

The Texas Rules of Civil Procedure, Rule 42, authorizes class actions, and under Texas law all members of the class are bound by an adjudication if the class were adequately represented. R. 285. No contention is made here that the class involved in the instant cause was not adequately represented.

In holding that the parties in the *Brown* case in the

Federal Court were bound by the decision in *Atkinson*, the Texas Supreme Court stated:

> "It is immaterial that *Brown* is not a class action. The controlling fact is that *Atkinson* was a class action as authorized. . .; and being a class action of the hybrid type, the judgment in *Atkinson* binds all members of the class insofar as validity of the bonds and the right of the city to construct runways are concerned if the class was adequately represented by those who sued on behalf of the class. The description of the plaintiffs in *Brown* shows clearly that they are members of the class represented by the plaintiffs in *Atkinson*, and it is not suggested that they were not adequately represented in that suit. Their right to relitigate the same issues is foreclosed. . . . This must be so. If it were not so, different groups of Dallas citizens could halt all efforts of the City to improve its airport facilities by filing new suits. Such an absurdity cannot be tolerated." R. 285.

The upshot of this already protracted litigation is that Petitioners want more than their "day in court." From the filing of the original complaint in *Atkinson* in 1961 where Petitioners lost on the merits to the present time, Petitioners have been seeking the same relief in their many court appearances, i.e., to prevent the construction of the parallel runway.

Clearly, the applicability of the *res judicata* and collateral estoppel rules demonstrate that no substantial federal question on the merits is presented by Petitioners, and that the actions of the Texas courts should be affirmed. And in spite of the fact that two of Petitioners' prayers (Brief 42-43) are directed at the Federal District Court that Court's actions are obviously correct and are not here under review.

2. The Texas State Court Had Jurisdiction to Issue Order to Enforce its Judgment by Prohibiting Vexatious Relitigation of Merits in Federal Court for Harassment Purposes

A state court may enjoin parties from prosecuting proceedings in a federal court in order to preserve its control over the subject matter of a suit properly within its jurisdiction. *Princess Lida* v. *Thompson*, 305 U.S. 456, 466. After applying the converse of this rule, this Court in *Kline* v. *Burke Construction*, 260 U.S. 226, 235, said:

> "The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law, based upon necessity; and where the necessity, actual or potential, does not exist, the rule does not apply."

It would be difficult to imagine a case of greater "necessity" for restraining parties from prosecuting relitigation proceedings than exists in the case at bar. Here no question of mere personal liability or even of an ordinary injunction is involved. Here the mere filing of a complaint by the Petitioners in any court, with whatever motive, has the automatic legal effect of preventing the sale of the city bonds to build the parallel runway which Petitioners oppose. R. 280, 283. Surely after emerging victorious from two years of bitter litigation Respondents have gotten something more than a plea of *res judicata* to be used in another full course of litigation in Federal Courts during which time an essential public project continued to be blocked.

Under such a situation, Petitioners after losing on the merits, could in time become the real victors. Respondents

submit such an incongruous result is not compelled by any law rule applicable in this case.

This Court has often held to the contrary. In *Phoenix Life Insurance Co.* v. *Bailey,* 80 U.S. 616, 618, the Court said "Authorities to show that equity will interfere to restrain irreparable mischief, or to suppress oppressive and interminable litigation, or to prevent multiplicity of suits, is unnecessary, as the proposition is universally admitted."

In *Cole* v. *Cunningham,* 133 U.S. 107, insolvency proceedings were in progress in the Supreme Judicial Court of Massachusetts against a debtor who had assets in New York, and certain Massachusetts creditors were prosecuting attachment suits in New York in an attempt to evade the laws of their domicil and obtain a preference over other creditors. This Court affirmed the decree of the Massachusetts Court restraining the creditors from prosecuting these suits.

In *Bradford Electric Light Co.* v. *Clapper,* 286 U.S. 144, at 159, this Court, in holding the provisions of a Vermont Workman's Compensation law applicable on the facts to a suit in Federal District Court in New Hampshire, said "By requiring that, under the circumstances here presented, full faith and credit be given to the public acts of Vermont, the Federal Constitution prevents the employee or his representative from asserting in New Hampshire rights which would be denied him in the State of his residence and employment. *A Vermont court could have enjoined Leon Clapper* [the plaintiff's intestate] *from suing the Company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont.*" (Emphasis supplied.)

In *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U.S. 44, cited by Petitioner, this Court held that a state court could not

enjoin a resident of the state from prosecuting a cause of action arising under the Federal Employers' Liability Act in a Federal court situated in another state because the Act specifically provided for venue there. This Court based its decision on the venue section of the Act, saying that the privileges granted therein could not be abrogated by the state court. However, citing *Cole* v. *Cunningham, supra*, this Court did point out that the power of the state court to prevent a resident under its jurisdiction from doing inequity does exist. Moreover, this Court expressly recognized the proposition that a state court can enjoin litigation in another court where this subsequent litigation is purely vexatious and harassing. Id. at p. 52. In a dissent Mr. Justice Frankfurter observed that the majority opinion did not give new currency to the "discredited notion that there is a general lack of power in the state courts to enjoin proceedings in Federal Courts." Id. at p. 56. That power was later recognized by this Court in a similar situation in *Pope* v. *Atlantic Coast Line R. Co.*, 345 U.S. 379, 383. Further, in the case of *Blanchard* v. *Commonwealth Oil Co.*, 294 Fed. 2d 834, (5th Cir. 1961) the Court held that where a party brings suit in a Federal Court, in contempt of an outstanding injunction issued by a state court the Federal court should dismiss the complaint without reaching the plea of *res judicata* or any other issue going to the merits of the claim.

The power of a court to enforce its judgment was also recognized in *Root* v. *Woolworth*, 150 U.S. 401, where a prior adjudication of title to land was enforced by injunction after a period of twenty years.

In *Steelman* v. *All Continent Corporation*, 301 U.S. 278, 291, a bankruptcy court had ordered a defendant to produce his books and records in an attempt to discover his assets. Subsequently, a suit was filed in another Federal court against the trustee in bankruptcy by a corporation to re-

move a cloud from certain property of the corporation alleged to be owned by the defendant. The bankruptcy court enjoined the corporation from proceeding in the Federal Court upon evidence that its pending suit was part of a scheme to defraud creditors of the defendant. This Court, in upholding the injunction, said (as did the Texas Supreme Court herein, R. 277, 286) that the restraint of a suitor to a proceeding is not a restraint of the court itself.

In their brief Petitioners rely heavily on *Central National Bank* v. *Stevens*, 169 U.S. 432. But there this Court said at page 464: "... [I]t has been frequently determined by this court that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until the judgment shall be satisfied. ... [I]t is scarcely necessary to quote authorities to show that to deprive a court of the power to execute its decrees is to essentially impair its jurisdiction. ..." Surely the court which rendered judgment in the *Atkinson* case had power to do all that is necessary to execute its judgment over the opposition of Petitioners. Thus the *Central National Bank* case does not support the position of Petitioners. There after a Federal court had already issued a final judgment establishing the title and rights of the holders of certain certificates a suit was brought in a state court attempting to again establish title and rights to the same certificates and restrain the parties from enforcing the decree of the Federal Court. Clearly the state court could not do this. That case is not like the case at bar because the court in *Atkinson* had already entered a final decree before Petitioners attempted to relitigate their claim in the Federal Court, thus placing the state court here in a situation somewhat analogous to that of the Federal court there. This Court should uphold the state court here as it did the Federal Court there and for identical reasons.

Petitioners cite *United States* v. *Johnson County* 6, Wall.

166, for the proposition that state courts have no power to restrain either the process of, or proceedings in, Federal Courts. However, all that was actually held in that case was that the fact that a state court had enjoined county officers from levying a tax to satisfy a judgment rendered by a Federal court was not a defense to an application to a Federal court for a writ of mandamus to require such officers to levy a tax for that purpose. Since the application for mandamus was a proceeding ancillary to its judgment in a proceeding where the Court had jurisdiction, and was a substitute for the ordinary process of execution to enforce payment of the judgment the Federal court had power to issue it. To the same effect, under similar circumstances, is *United States* v. *Lee County*, 6 Wall. 210, also cited by Petitioners, in which this Court pointed out that the mandamus proceeding was the exercise of jurisdiction which had previously attached. And *Johnson County, supra*, was followed, under similar circumstances, in *United States ex rel. Moses* v. *Keokuk*, 6 Wall. 514, another case Petitioners cite which does not support their position. Petitioners catagorize *Blanchard* v. *Commonwealth Oil Co., supra*, as a case involving a state court injunction to protect its jurisdiction in an *in rem* action. (Pet. Br. 21, 22.) That case was not an action *in rem* but in *personam*. Furthermore, the *Blanchard* case held that since the Florida Supreme Court issued an injunction against Blanchard from litigating the case in the Federal Court in Texas therefore it was the duty of the Federal District Court in Houston to honor the injunction and dismiss the case.

Petitioners in their suits in the Federal District Court were attempting to relitigate the merits adjudicated by the state courts and by this Court. Under such circumstances the above decisions of this Court established that the Texas courts have the power to enforce their judgment by injunc-

tion to prevent the relitigation in Federal court of the merits previously adjudicated by them.

3. The Texas Supreme Court Had Jurisdiction to Mandamus the Court of Civil Appeals

Pursuant to the Constitution and statutes of Texas and judicial interpretation thereof, the Supreme Court of Texas had jurisdiction, power and authority to mandamus the Judges of the Court of Civil Appeals to vacate a denial of the City's petition for a Writ of Prohibition and direct that Court to issue whatever writs were necessary to enforce its Judgment in the *Atkinson* case. Petitioner's contentions to the contrary are without merit.

Article 5, Section 3 of the Texas Constitution provides that "The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State." Pursuant thereto Article 1733 of Vernon's Annotated Texas Civil Statutes confers jurisdiction upon the Texas Supreme Court to issue writs of mandamus agreeable to the principles of law regulating such writs against any district judge, or Court of Civil Appeals or judges thereof.

This question of its power to mandamus the Court of Civil Appeals was considered and ruled on by the Texas Supreme Court in its Opinion in *City of Dallas* v. *Dixon*, of which Petitioners seek reversal, R. 278 et seq. The Texas Supreme Court's ruling that it possessed such power is based upon extensive judicial precedent from the Texas Courts. *Gulf C. & S. F. Ry. Co.* v. *Muse*, 109 Tex. 352, 207 S. W. 897 (1919); *Cleveland* v. *Ward*, 116 Tex. 1, 285 S. W. 1063 (1926); *Simpson* v. *McDonald*, 142 Tex. 444, 179, S. W. 2d 239 (1944).

The Texas Supreme Court's decision interpreting the

Texas Constitution and Texas statutes as conferring jurisdiction upon it to mandamus the Court of Civil Appeals to issue the Writ of Prohibition involved herein is binding upon this Court and will not be reviewed or reversed. *Kersh Lake Drainage District* v. *Johnson*, 309 U.S. 485, 489; *Fisher* v. *Pace*, 336 U.S. 155, 162; *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64, 78, 79; *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496, 500.

4. The Contempt Proceedings Herein Afforded Petitioners all Requirements of Due Process of Law

Traditionally, courts have claimed and exercised the power to convict and sentence those found guilty of contempt of court orders. Important public policy considerations have justified the exercise of this contempt power by the judiciary. Without question, if courts are to be more than mere sounding boards for the opposing view points, they must have power to enforce obedience to judicial decrees and orders.

The defendant in a contempt proceeding must be accorded due process of law. *Cooke* v. *United States*, 267 U.S. 517, 536; *Ex parte Terry*, 128 U.S. 289, 309. And the Petitioners in the instant case were accorded the full measure of due process. Petitioners were given reasonable notice and an opportunity to be heard. A full judicial trial was conducted in which Petitioners were represented by counsel. The Record before this Court is replete with evidence that Petitioners were guilty of violating the injunctive order; and in fact, such guilt is substantially admitted by Petitioners. Moreover, the punishment imposed by the Texas Court of Civil Appeals in these contempt proceedings was entirely fair, reasonable, and proper when considered in the light of the offense committed. Further, each Petitioner was given

an opportunity to purge himself by discontinuing the acts of contempt.

Each of the due process protections afforded Petitioners is discussed below:

a. *Reasonable Notice and An Opportunity to be Heard Were Given to Petitioners.*

Petitioners were given notice of the hearing on their violations of the Writ of Prohibition and Ancillary Orders issued by the Texas Court of Appeals and the order to show cause recited these violations. R. 82-90. Petitioners all appeared in person and by counsel in response to the notice and a full judicial trial was conducted in which Petitioners' rights were fully protected. R. 117-247. On pp. 221-22 of the Transcript, the following colloquy occurred during the contempt proceedings below:

> "The Chief Justice: I take it then, and the record will show that everyone here was given an opportunity to testify. And they were also notified that they didn't have to testify; not required to.
>
> "Mr. Kucera: Your Honor, may the record also show that the City of Dallas was ready and present in Court, and everyone of these parties that was cited for contempt to testify, upon advice of counsel they have refused to do so. And also was given an opportunity individually to select whether they wanted to follow the advice of counsel, and they declined to take the stand.
>
> "The Chief Justice: I think the record so shows. Is that true, Mr. Donovan?
>
> "Mr. Donovan: Yes, Your Honor, except the one thing that I said, that as of this moment that is my

advice. I reserve the right as the proceeding goes forward to change that advice if it becomes proper.

"The Chief Justice: Very well.

"Mr. Donovan: But as of now, that is my recommendation, and the record may show that."

On May 10, 1963, Petitioner Donovan filed a Motion for Continuance (R. 93-95) in which he stated, under oath, that he had been served with an Order to Show Cause, directing him to appear before the Court to show cause why he should not be punished for contempt. R. 93-94. And on pages 136-137 of the Record there are references to the fact that Petitioner Donovan personally was handed a copy of the Texas Court of Civil Appeals' Writ of Prohibition and Ancillary Orders and that the other Petitioners in this case were served and given notice either by mail or through their counsel, Petitioner Donovan. The Record further reveals that the Clerk of the Texas Court of Civil Appeals testified that he placed in the United States mail envelopes addressed to the parties in the contempt proceedings and that these envelopes had a return address and that none of them was returned to him. R. 214. The fact is that the Record before this Court abounds with evidence that the Petitioners had ample notice of the injunctive order outstanding and the contempt proceedings.[5]

[5] Cf. R. 123, wherein the Chief Justice of the Court of Civil Appeals states that ". . . we issued notice to the parties to appear and show cause why they should not be held in contempt of the court. . . ." R. 303, wherein Petitioner Donovan stated in the United States District Court Proceedings that an injunction had been served on them which enjoined everybody in the Love Field area and the attorneys representing them from attempting to prevent the construction of a new runway or questioning the validity of the bonds. R. 337, involving proceedings in the United States District Court for the Northern District of Texas, wherein Petitioner Donovan stated that he had advised his clients that a Writ of Prohibition and Ancillary Orders was outstanding and that by coming into the District

Furthermore, the transcript of the contempt proceedings of May 20, 1963, clearly reveals that the Chief Justice provided each party charged with an opportunity to purge himself of the possibility of contempt. The Chief Justice advised each party that:

> "All we are here about this morning is to determine whether any or all of you should be held in contempt of court for refusing to obey a court order to desist from proceeding with the litigation in Federal Court. That's all we are here about." R. 124

Then, the Chief Justice called each person by name and personally asked each of them if he were present; and if he were appearing at the hearing as one of the parties charged; and, if he were entering his appearance, whether he was represented by counsel. R. 123-136. If a party at this time indicated that he was not so appearing, the Chief Justice gave him an opportunity to withdraw from the case. Also, if the party was shown not to have been served; or if he

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Court to further prosecute the matter they may be subjecting themselves to fine and imprisonment and those appearing in the District Court did so under written signature acknowledging that statement. R. 93, wherein Petitioner Donovan acknowledged the fact that he and his clients were served with the Order to Show Cause for disobedience of the Writ of Prohibition. R. 139, wherein Petitioner Donovan states that he had advised his clients that they were not in contempt if they did not obey the Writ of Prohibition of the Court. R. 214, Testimony of the Clerk of the Texas Court of Civil Appeals that he had mailed copies of the Writ of Prohibition And Ancillary Orders to the litigants. R. 226, Petitioner Donovan stated, under oath, that after the issuance of the Writ, he advised his clients and that such Writ is invalid. R. 228, Petitioner Donovan stated under oath that he held meetings with his clients and gave written notice to them, after receiving a copy of the Writ. R. 93, Motion for Continuance with Petitioner Donovan's affidavit, wherein Petitioner Donovan admits that: (1) he is the attorney of record for all of the Respondents in the contempt proceedings; and (2) he has been served with notice on May 8, 1963 to show cause why he should not be punished for contempt of court, directing him to appear before the Court at 9 a.m. on Monday, May 13, 1963, to show cause why he should not be punished for contempt of this Court.

had filed a motion to dismiss himself from the case; or indicated that he did not know that he had been a party to the proceedings; or if he indicated that he was not appearing as a party charged, such party was dropped from the list of those later charged with contempt of court. R. 120-136.

It is crystal clear that the foregoing convincingly establishes that Petitioners had more than adequate notice of the Court's injunctive order and the consequences which would result from a violation thereof. They were given notice of the contempt proceedings and afforded a real opportunity to purge themselves, and some of the parties to these contempt proceedings did just that. Altogether 26 of the Respondents purged themselves of contempt and the sentence of others was modified. Petition p. 37a.

Contempt proceedings are not required to assume any particular form so long as the substantial rights of the accused are preserved. *Cooke* v. *United States*, 267 U.S. 536, 537, *In re Salvin*, 131 U.S. 267, 278, 279; *Ex parte Terry*, 128 U.S. 289, 309. What was stated above manifestly demonstrates that the substantial rights of Petitioners were fully preserved. Petitioners not only received actual notice of the outstanding injunctive order and the contempt proceedings but they also received notice through their counsel, Petitioner Donovan. And as counsel for Petitioners, Petitioner Donovan was charged with the responsibility of communicating the existence of the injunction to those whom he represented; and, as stated previously, he concedes that he did so communicate this knowledge. Notice to a party's agent or attorney is notice to the party. *Camarota* v. *United States*, 111 F. 2d 243 (3rd Cir. 1940), cert. denied, 311 U.S. 651; *Texas Quarriers, Inc.* v. *Pierce*, 244 S.W. 2d 571 (Tex. Civ. App. 1951); *Romero* v. *Grande Lands*, 288 S.W. 2d 907 (Tex. Civ. App. 1956); Cf. *Russell* v. *United States*, 86 F. 2d 389 (8th Cir. 1947); *United States* v.

Brotherhood of Railroad Trainmen, 95 F. Supp. 1010 (D.C. Dist. of Col. 1951). In *Camarota*, the defendant had the opportunity to consult with counsel; was informed that a presentment for contempt would be lodged against him; a copy of the presentment was mailed to his counsel; and, though the defendant was not served with a formal rule to show cause, he was told personally to appear before the judge and answer the charge, and he did in fact appear with counsel at the stated time and place and offered evidence in his defense. The Court held that he had been accorded full due process of law.

Notwithstanding the fact that Petitioners had personal notice of the issuance of the injunction and contempt proceedings by having been served by mail, it is the law in Texas that knowledge of the issuance of an injunction, even without formal personal service, is a sufficient basis for a contempt conviction for violation of the outstanding injunction. *Ex parte Young*, 103 Tex. 470, 129 S.W. 599 (1910); *Ex parte Stone*, 72 S.W. 1000 (Tex. Crim. App. 1903); *Ex parte Testard*, 102 Tex. 287, 115 S.W. 1155 (1909). In *Ex. parte Haubelt*, 57 Tex. Cr. R. 512; 123 S. W. 607 (1909) The Texas Supreme Court said:

> "• • • He comes into court and announces ready for trial, and the mere fact that he did not have a formal summons is thereby waived, since the only purpose of this summons would be to apprise him of the fact that he was to be tried for contempt. When he waives that citation, and comes into court, and announces ready, admitting that he openly defied the order of the court, no legitimate purpose could have been subserved, and no interest of his preserved, by a bare citation. • • •"

b. *A Full and Fair Judicial Trial Was Accorded Petitioners*

The Record in this cause clearly reveals that Petitioners were accorded a full and fair judicial trial in which their constitutional rights were fully protected. Petitioners filed a Motion to Quash and Answer to the contempt charges, and this Motion was heard with Petitioner Donovan appearing for Petitioners (Respondents below). R. 117, et seq. The Court reviewed the history of the litigation and emphasized what was involved. R. 122, 123. And, as stated above, the Court then called the name of each Respondent below to determine if he were present and represented by counsel and whether he knew the nature of the proceedings and wished to continue as a party. Petitioner Donovan presented a Reply Argument on Behalf of the Respondents below. R. 139-159. The Motion to Quash was denied. R. 162. A list of the names to whom the Writ of Prohibition and Ancillary Orders had been sent was admitted into evidence R. 171, 241-247; testimony was taken and direct and cross examination conducted, R. 187-235; and full time and opportunity was given to every party who wished to be heard.

On May 22, 1963, the Texas Court of Civil Appeals stated that:

> "We have come to this conclusion that there has been a defiance of law, and that it is our duty to take notice of it and to take appropriate steps in view of it." R. 235.

The Court then imposed the fines of $200 each and sentenced Petitioner Donovan to 20 days in the County Jail of Dallas County (R. 237-238), pursuant to its Judgment of Contempt. R. 248-254. Clearly, the judicial trial accorded Petitioners in these contempt proceedings gave them their full measure of due process of law. *Cooke* v. *United States*,

267 U.S. 517, 536; In *re Salvin*, 131 U.S. 267, 279; *Ex parte Terry*, 128 U.S. 289, 309; *United States* v. *United Mine Workers of America*, 330 U.S. 258, 298, *Eilenbecker* v. *District Court*, 134 U.S. 31, 38; *Camarota* v. *United States*, 111 F. 2d 243 (3rd Cir. 1940), cert. denied, 311 U.S. 651.

c. The Evidence Supports the Contempt Convictions

The evidence supporting the contempt convictions is clear and convincing. The fact is that there is no issue as to whether the injunctive order of the Texas Court of Civil Appeals was violated, for Petitioner Donovan specifically concedes this point. R. 212, 332, 337. And, as stated by the Court of Civil Appeals:

> "... each of them, have been guilty of contempt of this Court by violating the Writ of Prohibition and injunction heretofore issued by us in the following respects:
>
> (a) In failing to request the Federal Court to dismiss the case of Daniel C. Brown, et al. v. City of Dallas, et al., No. 9276 pending in the United States District Court.
>
> (b) By filing motion contesting the dismissal of said Brown suit in the Federal Court;
>
> (c) That the respondents who made themselves new parties in the Federal Court case, following the issuance of our Writ of Prohibition and injunction, were guilty of contempt in knowingly aiding and abetting the further prosecution of said suit in the Federal Court;
>
> (d) In appearing and vigorously and actively opposing and contesting the motion to dismiss the Brown suit in the Federal Court;
>
> (e) By taking exceptions to the order of the Federal Court in dismissing the Brown suit;

(f) By filing cause No. CA-3-63-120 Civil styled James P. Donovan, et al. v. Supreme Court of Texas, et al., in the United States District Court which said suit seeks to interfere with the enforcement of the Writ of Prohibition issued by this Court" Pet. 34a.

The fact is that Petitioners are not contesting the proposition that they actually violated the Texas Court of Civil Appeals' injunctive order. R. 212, 332, 337. Rather, Petitioners argue that the Court lacked the authority to issue the order, and that the Texas Supreme Court is without power to order the Texas Court of Civil Appeals to issue the injunctive order. Respondents have fully demonstrated that such authority does exist and that Petitioners' remedy after the issuance of the injunction was an appeal to this Court. *United States* v. *United Mine Workers of America*, 330 U.S. 258, 293; *Fisher* v. *Pace*, 336 U.S. 155, 162, *infra* at pp 48-52.

d. *The Contempt Judgments Are Fully Supported by the Record*

The punishment imposed for the contempt was in no wise arbitrary or excessive, but was entirely consistent with the evidence adduced at the hearing. This Court has held that in imposing a fine for criminal contempt, the trial judge may consider the following factors: (1) the extent of the willful and deliberate defiance of the Court's order; (2) the seriousness of the consequences of the contumacious behavior; (3) the necessity of effectively terminating the defendant's defiance as required by the public interest; and (4) the importance of deterring such acts in the future. *United States* v. *United Mine Workers of America*, 330 U.S. 258, 302-303. The Court in that case went on to state that "Because of the nature of these standards, great reliance

must be placed upon the discretion of the trial judge." This Court also stated that in assessing the proper punishment to be meted out for contempt, a court "must then consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." (Id. at 303.)

Justice Frankfurter in his concurring opinion in *United States* v. *United Mine Workers of America*, stated on page 12 that:

> "In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."

Applying the above criteria to the facts in the instant case, it is crystal clear that the punishment inflicted by the Texas Court of Civil Appeals was not excessive. Petitioner Donovan and the other Petitioners he represented flagrantly violated the Court's injunctive order by filing a subsequent vexatious action in the United States District Court for the Northern District of Texas. Petitioners further vigorously prosecuted their original case and added and dropped certain parties thereto. Because of this willfull defiance of the Court's order the City of Dallas was prevented still again from taking the necessary steps required for the completion of the improvements to Love Air Field. Hence, the public interest involved was again frustrated. Petitioners had previously delayed the construction of the Air Field by instituting judicial proceedings which

eventually terminated in favor of the City of Dallas by this Court's denying Petitioners' Writ of Certiorari, *supra*, p. 7. In *Atkinson* there is no question but that Petitioners had had their full day in court on the merits. The sole purpose of filing the action in the United States District Court and thereby violating the outstanding injunctive order was for harassment and delay, since Petitioners knew that the mere filing of the subsequent action effectively and automatically halted the issuance of the revenue bonds, the proceeds of which are required to finance the air field project.

Accordingly, the $200.00 fines imposed upon Petitioners and the twenty-day jail sentence meted out to Petitioner Donovan were required and completely appropriate in order to put an end to Petitioners' contumacious behavior. In *Brown* v. *Lederer*, 140 F. 2d 136, 139 (7th Cir. 1944), cert. denied 322 U.S. 734, the Court stated that:

> "... punishment in a contempt proceeding, for violation of a valid injunctional order made by a court of competent jurisdiction, is not fixed or determined..., but rests solely in the sound discretion of the court, subject only to the Constitutional provision against cruel and unusual punishment."

In *Brown* v. *Lederer*, *supra*, a contempt punishment which even exceeded the severity prescribed in the applicable statute was upheld as not excessive. Cf. *Eilenbecker* v. *District Court*, 134 U.S. 31, where after due notice, and opportunity of defense, a fine of $500 and costs and imprisonment for a period of three months were imposed upon the six defendants for contempt in violating the injunction of the Supreme Court of Iowa restraining each of the defendants from selling intoxicating liquors.

If courts are to maintain their integrity, dignity and effective functioning as a judicial system under the rule of

law, and if they are to function properly in carrying out their constitutional and statutory duties, the defiance of court authority, as exemplified by the misconduct in the present case, cannot be tolerated. If the rule of law in our Nation is to be maintained, courts must vigorously protect their judgments, orders, and processes. All those who would by misconduct obstruct the administration of justice must do so at their peril. The interests of orderly government demand that respect and compliance be given to court orders issued by courts possessed of jurisdiction over the subject matter and over the litigants. These fundamental principles require affirmance of the decisions of the Texas courts herein.

5. The Injunctive Order of the Texas Court of Civil Appeals Must Be Obeyed Until Stayed or Reversed

Having been served with copies of the injunctive order, Petitioners willfully elected to flagrantly disregard the order and show their contempt by filing a new complaint against the individual members of the Texas Supreme Court and the Texas Court of Civil Appeals (R. 316-322) and then they added and dropped parties and pressed the vexatious litigation already filed (*Brown* case) in the United States District Court for the Northern District of Texas, to relitigate the merits of *Atkinson*, rather than withdrawing it. R. 306, 307. Petitioner Donovan, who had appeared in *Atkinson* and *Brown* as an attorney only now, for the first time, in the case against members of the Texas Supreme Court and Civil Court of Appeals became a plaintiff along with the other Petitioners herein. This entry of an appearance as a party, as well as counsel, could only be to show his contempt for the members of those Courts and for their orders.

Petitioners concede that they violated the outstanding injunctive order, but defend their actions on the grounds that the Supreme Court of Texas lacked authority to mandamus the Texas Court of Civil Appeals to issue the injunctive order prohibiting Petitioners from relitigating the matter and that the Texas Court of Civil Appeals' injunctive order denied Petitioners a federal forum. However, even assuming, *in arguendo,* that the action of the lower Texas courts were without authority,[6] Petitioners' remedy was an appeal to this Court to stay or reverse the orders issued by the Texas courts. Until such an appeal was taken, Petitioners were compelled to obey these orders. For it is a well established principle that where a court has valid jurisdiction over the parties and the subject matter, an injunctive order may issue, and the parties against whom the injunction is directed are bound by such order until the order is stayed or reversed. *United States* v. *United Mine Workers of America,* 330 U.S. 258, 293; *Fisher* v. *Pace,* 336 U.S. 155, 162. In *United States* v. *United Mine Workers of America,* at page 293, the Court stated:

> "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings."

In *Howat* v. *Kansas,* 258 U.S. 181, 189-190, this Court stated:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings prop-

[6] The contrary is demonstrated *supra* pp. 31-37.

> erly invoking its action, and served upon persons made parties therein and within the jurisdiction must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

Moreover, violations of an order are punishable as contempt even though the order is set aside on appeal. *United States* v. *United Mine Workers of America*, 330 U.S. 258, 294; *Worden* v. *Searls*, 121 U.S. 14, 25-27. The above proposition is also valid even though the basic action has become moot. *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 450. Again, in the *United Mine Workers* Case, at page 294, this Court stated:

> "Orders outstanding or issued after the date [the date on which an applicable statute was declared invalid] were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand."

In stressing the importance of full compliance with judicial decrees and orders, where a court has jurisdiction over the parties and the subject matter, this Court stated in *Fisher* v. *Pace*, 336 U.S. 155, 162:

> "If they [the court's rulings and orders] are erroneous the injured party has the plain, simple and adequate remedy of appeal. It was thus the duty of counsel to abide by its decisions even if erroneous; and if any rights of his clients were violated the remedy was by exception and appeal. Any other procedure would result in mockery of our trial courts and would destroy every concept of orderly process in the administration of justice."

The United States District Court in *Brown* v. *City of Dallas* (R. 306) stated, in dismissing the pending suit:

> "The issues that are sought to be litigated in the case in the Federal Court have been held by the Supreme Court to be the same as the issues which have been litigated in the *Atkinson* case. The prayer for relief is similar. In my opinion there is no justiciable issue to be presented in the Federal court case. All the issues have been decided in the *Atkinson* case. I consider that you are attempting to make me an Appellate Supreme Court of the United States, and that *your appeal is to the Supreme Court of the United States, and not to this Court.*" (Emphasis supplied).

It is a manifestly clear and sound proposition that the interests of orderly government and administration of justice demand that respect and compliance be accorded to the orders issued by courts possessed of competent jurisdiction. And these orders, even if wrongfully issued, must be obeyed until proper appellate procedures are taken. In addition to the cases cited above, Mr. Chief Justice Hughes elaborates upon this principle in *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371, 374-378.

Accordingly, Petitioners were validly held in contempt of court by their willful violation of the outstanding injunctive order issued by the Texas Court of Civil Appeals.

Conclusion

Petitioners, after having lost on the merits their previous class action to prevent construction of an airport runway have knowingly and flagrantly violated valid court orders issued by the Texas Court of Civil Appeals which that Court found necessary under the facts herein to protect and enforce its judgment. Rather than appeal or seek a stay of those orders prohibiting relitigation in federal court of their claim to prevent the runway, Petitioners defiantly pursued a course of flagrant disobedience and contempt by totally disregarding them. Petitioners' only defense is a claim of an absolute right to a Federal Court retrial of the merits of their claim—a defense which is totally without merit as the state Court did or could have decided all possible federal as well as state law questions and its judgment is *res judicata* thus barring the Federal Court relitigation.

After notice, full and complete court proceedings, and full opportunity to absolve or purge themselves Petitioners have been adjudged guilty of contempt. That judgment must be upheld if the dignity of, and respect for, our independent judiciary which is essential to the rule of law is to prevail. And that dignity and respect cannot be maintained if contempts, such as those committed by Petitioners, go unpunished. Petitioners were accorded all due process protections, and the contempt judgments, which are most reasonable in amount of penalty under the circumstances of this case, should be upheld.

The decisions of the Texas Courts under review herein

are within their jurisdictions and are correct in all respects and should be affirmed by this Court.

Respectfully submitted,

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APPENDIX A

Vernon's Annotated Texas Civil Statutes

Art. 1269j-5. Airport revenue bonds; cities with population over 70,000.

Section 1. All cities having a population of more than seventy thousand (70,000) according to the last preceeding federal census, may issue revenue bonds for enlarging, or extending, or repairing, or improving its airport, or for any two (2) or more such uses. Included with the meaning of improvements without limiting the generality of the term, is the construction or enlargement of hangars and related buildings for use by tenants or concessionaires of the airport, including persons, firms or corporations rendering repair or other services to air carriers. Such revenue bonds may be issued when duly authorized by an ordinance passed by the governing body of such city. Such revenue bonds shall be secured by a pledge of all, or such part of, the revenues from the operation of the city's airport as may be prescribed in such ordinance. To the extent that the revenues of the airport may have been pledged to the payment of revenue bonds which are still outstanding, the pledge securing the proposed revenue bonds shall be inferior to the previous pledge or pledges. Within the discretion of the governing body of the city and subject to limitations contained in previous pledges, if any, in addition to the pledge of revenues, a lien may be given on all or any part of the physical properties comprising such airport. Included within the authority to pledge revenues and without limiting the generality of such authority is the right to pledge all or any part of the lease considerations to be received by the city for any such hangars or buildings, and within the discretion of the governing body of the city the sole security for such bonds may be the revenues to be received from leasing any one or more of such hangars and buildings, together with or without a lien upon such hangars or buildings and the land on which they are to be situated.

Section 2. No money raised or to be raised from taxation shall be used to pay the principal of or interest on any revenue or refunding bonds issued under this Act. When any of the revenues of such airport are pledged to the payment of bonds issued under this Act, it shall be the duty of the governing body of the City in reference to the revenues pledged, to cause to be fixed, maintained and enforced charges for services to be rendered by properties and facilities whose revenues have been pledged at rates and amounts sufficient to provide for the expense of maintenance and operation of such properties and facilities and to provide the amounts of money required under such ordinance to pay principal of and interest on the revenue bonds and to provide the reserve funds required by such ordinance.

Section 3. The Revenue Bonds shall be sold at a price or prices so that the interest cost of the money received therefor, computed to maturity in accordance with standard bond interest tables, shall not exceed five per cent (5%) per annum; shall mature serially or otherwise within thirty (30) years from their date; shall be negotiable instruments under the Negotiable Instruments Act of the State of Texas; shall not be finally issued until approved by the Attorney General of Texas; and registered by the Comptroller of Public Accounts of the State of Texas, and after such approval shall be incontestable.

Section 4. Refunding Bonds bearing an interest rate or interest rates which result in the same or a lower overall interest cost to City may be either issued in exchange for or to provide funds to repurchase and retire any such revenue bonds.

Section 4(a). Bonds issued by any city having a population of one hundred fifty thousand (150,000) or more, according to the last preceding Federal Census, pursuant to the provisions of this law shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations and all insurance companies. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities,

counties, school districts, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.

(729-4)